THE BOARD OF CHIROPRACTIC EXAMINERS

JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE
2000 SUNSET REVIEW REPORT

Four Year Overview of the Board's Regulatory Program, Background Paper for the 1999 Public Hearing, Board's Response to Issues and Recommendations from 1999/2000 Sunset Review, and Final Recommendations of the Joint Committee and the Department of Consumer Affairs

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PART 1.

Board of Chiropractic Examiners

BACKGROUND INFORMATION AND FOUR YEAR OVERVIEW OF THE CURRENT REGULATORY PROGRAM

BACKGROUND AND DESCRIPTION OF THE BOARD AND PROFESSION

The Board of Chiropractic Examiners, also known as the Chiropractic Board, (Board) was created by a 1922 initiative measure that established The Chiropractic Act of California (Act). The Act regulates the 100-year old practice of chiropractic care. The seven-member board is responsible for enforcing the Act and other related state and federal laws regulating doctors of chiropractic (DCs). DCs are independent practitioners (over 70 percent are in solo practice) who provide non-drug, non-surgical health care through treatment of the musculoskeletal and nervous systems and manipulation of the spinal column and bony tissues. Common conditions treated include low back pain, neck pain, and headache. The care provided is generally rehabilitative in nature and involves the management of pain resulting from an injury or accident.

The five professional and two public members of the board are appointed by the Governor. Board members serve four-year terms. As stated in their sunset report, the Board and its ten-member staff see their mission as:

"Protecting Californians from fraudulent or incompetent chiropractic practice, examining applicants for licensure in order to evaluate entry level competence, and enforcing the Chiropractic Initiative Act and Regulations Relating to the Practice of Chiropractic."

The Chiropractic Board is one of only two state vocational regulatory programs established directly by an initiative of the people, rather than by a statutory change enacted by the Legislature. The other program is the Osteopathic Act. In comparison, the state's other 32 vocational regulatory programs, which reside within the Department of Consumer Affairs (Department) were created by statute. The chiropractic and osteopathic boards are further distinguished from these other programs by their complete independence from the Department. Thus, the Chiropractic Board, along with the Osteopathic Board, operates without any oversight from the state's main consumer agency.

The laws governing chiropractors, as set forth in the Act, various sections of the Business and Professions Code, and Title 16 of the California Code of Regulations, function as a practice act that requires licensure for individuals performing chiropractic care. With the exception of

various fee increases and some challenges to the chiropractic scope of practice, the Act has remained relatively unchanged since its inception. The practice of chiropractic care is regulated through licensure in all 50 states.

There are approximately 14,000 licensed chiropractors regulated by the Board for FY 1998/99. Figure 1 provides Board licensing and enforcement data for the past four years.

Figure 1- Licensing Data

LICENSING DATA FOR [PROFESSION]	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
Total Licensed Active Inactive	Total: 12,907 **11,047** **1,860**	Total**:** 13,190 **11,249** **1,941**	Total**:** 13,438 **11,553** **1,885**	Total: 14,013 **12,008** **2,005**
Applications Received	Total: **878**	Total: **504**	Total: **728**	Total: **721**
Applications Denied	Total: **N/A**	Total: **N/A**	Total: **4**	Total: **6**
Licenses Issued	Total: **456**	Total: **652**	Total: **566**	Total: **723**
Renewals Issued	Total: **N/A**	Total: **N/A**	Total: **N/A**	Total: **11,997**
Statement of Issues Filed	Total: **N/A**	Total: **N/A**	Total: **8**	Total: **1**
Statement of Issues Withdrawn	Total: **N/A**	Total: **N/A**	Total: **0**	Total: **0**
Licenses Denied	Total: **N/A**	Total: **N/A**	Total: **2**	Total: **0**
Licenses Granted	Total: **N/A**	Total: **N/A**	Total: **6**	Total: **1**

BUDGET AND STAFF

Current Fee Schedule and Range

Annual license renewal fees of $150 are the main funding source for the Board, generating over 80 percent of the board's overall revenues. Unlike most professional regulatory programs, the Board requires annual license renewal. The Board is proposing to increase various administrative fees such as the corporation annual filing fee, duplicate renewal receipt fee, and the reciprocal license application fee. In addition, the Board is planning to establish a $100 restoration of revoked license/reduction of penalty application fee. The Board indicates that these changes are necessary to allow the Board to recoup its costs for providing various administrative services.

Figure 2 – Fee Schedule

Fee Schedule	Current Fee	Statutory Limit
License Application Fee	**$100**	**$100**
Examination Fee	**None**	**No Limit**
Renewal Fee	**$150**	**$150**

Revenue and Expenditure History

The Board operates on an annual budget of approximately $1.8 million. Annual revenues are a little over $2 million, leaving the Board with a high projected reserve of $3.4 million in the State Board of Chiropractic Examiners Fund. The Board's expenditures have remained relatively even over the past five years with a slight annual increase attributable primarily to personnel services.

Figure 3 – Revenues and Expenditures

	ACTUAL				PROJECTED	
REVENUES (Thousands)	**FY 95-96**	**FY 96-97**	**FY 97-98**	**FY 98-99**	**FY 99-00**	**FY 00-01**
Renewal Fees	**$1,578**	**$1,602**	**$1,808**	**$1,853**	**$1,825**	**$1,825**
Other Fees	**63**	**76**	**118**	**99**	**90**	**90**
Fines & Penalties	**93**	**97**	**71**	**51**	**55**	**55**
Cost Recovery	**N/A**	**18**	**18**	**31**	**[a]**	**[a]**
Income from Investments	**116**	**128**	**144**	**164**	**164**	**164**
Misc. Revenue	**25**	**30**	**48**	**35**	**66**	**66**
TOTALS	1,875	1,951	2,207	2,233	2,200	2,200
EXPENDITURES (Thousands)	**FY 95-96**	**FY 96-97**	**FY 97-98**	**FY 98-99**	**FY 99-00**	**FY 00-01**
Personnel Services	**$383**	**$435**	**$515**	**$507**	**619**	**631**
Operating Expenses	**93**	**89**	**200**	**399**	**305**	**293**
Examination Administration	**65**	**60**	**0**	**0**	**0**	**0**
Enforcement	**917**	**783**	**741**	**644**	**656**	**656**
Fixed Expenses	**204**	**237**	**290**	**263**	**233**	**233**
TOTALS	1,662	1,604	1,746	1,813	1,813	1,813

Expenditures by Program Component

Figure 4 shows Board expenditures by program component for the past four years since 1995-96. The Board spends its nearly $2 million annual budget about evenly on enforcement activities and administrative functions. The Board estimates that current-year spending on enforcement

will account for $644,000. Its enforcement spending on a percentage basis is roughly in line with other health care regulatory boards. However, the Board appears to be spending disproportionately more on its administrative costs than other regulatory programs.

Figure 4 – Expenditures by Program Component

EXPENDITURES BY PROGRAM COMPONENT (Thousands)	FY 95-96	FY 96-97	FY 97-98	FY 98-99	Average % Spent by Program
Enforcement	**$917**	**$783**	**$741**	**$644**	**48**
Examination	**65**	**60**	**N/A**	**N/A**	**4**
Administrative	**680**	**761**	**1,005**	**1,169**	**48**
TOTALS	1,662	1,604	1,746	1,813	

Note 1: During 1997/98 year, the general expenses for operation increased from $25,000 to $100,000.

Fund Condition

As summarized in Figure 5 below, the Board has maintained a fairly large reserve for the past four years as revenues have exceeded expenditures. This reserve is projected to exceed a full year's operating expenses by the end of this budget year and reach a 2.5-year reserve level by 2001. Generally, a prudent reserve of three months operating costs is recommended for all boards. Clearly the Board needs to address this excessive fund reserve either by increasing spending on identified priorities or reducing fee levels.

Figure 5 – Fund Condition

ANALYSIS OF FUND CONDITION (Thousands)	FY 96-97	FY 97-98	FY 98-99	FY 99-00 (Budget Yr)	FY 00-01 (Projected)	FY 01-02 (Projected)
Total Reserves, July 1	**$1,948**	**$2,295**	**$2,810**	**$3,263**	**$3,680**	**$4,097**
Total Rev. & Transfers	**1,951**	**2,207**	**2,233**	**2,200**	**2,200**	**2,200**
Total Resources	**3,899**	**4,502**	**5,043**	**5,463**	**5,880**	**6,297**
Total Expenditures	**1,604**	**1,692**	**1,780**	**1,783**	**1,783**	**1,783**
Reserve, June 30	**2,295**	**2,810**	**3,263**	**3,680**	**4,097**	**4,514**
MONTHS IN RESERVE	17.17	18.94	21.99	24.77	27.57	30.38

LICENSURE REQUIREMENTS

Education, Experience and Examination Requirements

To be a licensed chiropractor in California, applicants generally must hold a high school diploma or its equivalent, complete a minimum of 60 semester hours of postsecondary education and a three-year chiropractic training program (consisting of at lest 4,400 hours in specified curriculum subjects) at an approved chiropractic college, and pass both a national and state examination. The Board currently is not considering any changes to the licensure requirements. However, the Board is monitoring the experience of other states with newly established bachelor's degree requirements and efforts to establish this as a national standard by 2002. It should be noted that a recent industry survey indicates that over 60 percent of chiropractors hold a bachelor's degree.[1]

In order to qualify to take the state examination, candidates must first pass the five-part written and clinical National Board of Chiropractic Examiners test, which is given two times a year. The average pass rate on the national examination for California candidates is 58 percent. Over 400 candidates take the California chiropractic examination each year. As Figure 6 shows, the average annual passage rate for the state chiropractic examination from 1997 to 1998 was 90 percent. The Board suggests that the high pass rate on the California test, which is given six times a year, is due in part to candidate preparation for the national examination. The California examination was last validated in 1997, and a new validated version of the examination should be available next year.

Figure 6 – Examination Pass Rate

National Examination Pass Rates (Last Administration 11/97)					
	1994	1995	1996	1997	Total
CANDIDATES	490	955	831	23	2299
PASSAGE RATE	289(59%)	541 (57%)	492 (59%)	11 (48%)	1333 (58%)

California Law Examination Pass Rate				
	1997	1998	1999	Total
CANDIDATES	488	805	568	1861
PASS %	463 (95%)	707 (88%)	522 (92%)	1692 (91%)

As Figure 7 shows, the Board does not have historical data on application processing time. Therefore, it is not possible to determine what, if any, trends apply to average time periods for issuing licenses.

[1] "1997 American Chiropractic Association Bi-Annual Statistical Survey" as reported by Christine Goertz in the Journal of the American Chiropractic Association, November 1998.

Figure 7 – Application Processing Times

AVERAGE DAYS TO RECEIVE LICENSE	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
Application to Examination	**N/A**	**N/A**	**N/A**	**135**
Examination to Issuance	**N/A**	**N/A**	**N/A**	**21**
Total Average Days	**N/A**	**N/A**	**N/A**	**156**

Continuing Education/Competency Requirements

To help ensure ongoing licensee competency, the Board requires 12 hours of approved continuing education (CE) coursework each year. The CE courses must be relevant to chiropractic care with the requirement that at least four of the hours be in adjustive technique. However, there is no CE testing requirement. The Board is in the process of establishing a CE enforcement program that will rely on random audits to ensure licensee compliance.

Recognizing that untested CE coursework does not guarantee continued competence, the Board is considering alternatives to the current requirements. One alternative would be adding a nationally recognized testing requirement to the CE program to replace the annual coursework requirements for a specified number of years for chiropractors with licenses in good standing.

Comity/Reciprocity With Other States

The Board has no provisions for the temporary licensing of individuals licensed by other states or countries. *All* applicants are subject to California licensure requirements. The Chiropractic Act does provide for reciprocal licensure for out-of-state applicants. However, because of the variation in state licensing standards, the Board does not offer automatic reciprocal licensure for individuals licensed as chiropractors in other states. Rather, licensed individuals from other states applying for California licensure must possess five years of chiropractic experience to be eligible for reciprocal licensure.

The Board is not proposing any changes in its reciprocity policy. Rather it is anticipated that all U.S. chiropractors will be licensed according to the national examination. Notably, the need for state license reciprocity does not appear to be great given that 97 percent of chiropractors practice in one state only.[2]

[2] Ibid.

ENFORCEMENT ACTIVITY

Figure 8 – Enforcement Activity

ENFORCEMENT DATA	FY 1995/96	FY 1996/97[a]	FY 1997/98	FY 1998/99
Inquiries	Total: **N/A**	Total: **N/A**	Total: **N/A**	Total: **N/A**
Complaints Received (Source)	Total: **N/A**	Total: **N/A**	Total: 608	Total: 540
Public			**249**	**179**
Licensee/Professional Groups			**94**	**98**
Governmental Agencies			**95**	**100**
Other			**170**	**163**
Complaints Filed (By Type)	Total: 585	Total: 664	Total: 488	Total: 543
Unprofessional conduct	**70**	**627**	**102**	**166**
Excessive treatment	**151**	**0**	**16**	**17**
Insurance Fraud	**73**	**24**	**82**	**53**
Billing disputes	**58**	**0**	**58**	**0**
Convicted of crime	**48**	**6**	**42**	**45**
Failure to provide records	**65**	**1**	**16**	**34**
Sexual misconduct	**39**	**0**	**32**	**23**
Advertising	**4**	**0**	**37**	**55**
Section 802s	**36**	**0**	**10**	**23**
Non-jurisdictional	**18**	**0**	**20**	**3**
Unlicensed activity	**23**	**0**	**19**	**22**
Negligence Incompetence	**0**	**1**	**40**	**34**
Other	**0**	**5**	**14**	**68**
Complaints Closed	Total: **N/A**	Total: **N/A**	Total: **638**	Total: **621**
Referred for Investigation	Total: **N/A**	Total: **N/A**	Total: **66**	Total: **79**
Compliance Actions	Total: **N/A**	Total: 50	Total: 68	Total: 95
ISOs & TROs Issued		**0**	**0**	**0**
Citations and Fines		**0**	**0**	**0**
Public Letter of Reprimand		**0**	**0**	**1**
Cease & Desist/Warning		**50**	**68**	**94**
Referred for Diversion		**0**	**0**	**0**
Compel Examination		**0**	**0**	**0**
Referred for Criminal Action	Total: 1	Total: 5	Total: 5	Total: 3
Referred to Attorney General's Office	Total: **N/A**	Total: 12	Total: 26	Total: 63
Accusations Filed		**12**	**25**	**62**
Accusations Withdrawn		**0**	**0**	**0**
Accusations Dismissed		**0**	**1**	**1**
Stipulated Settlements	Total: 12	Total: 15	Total: 12	Total: 28

Disciplinary Actions	Total:	9	Total:	16	Total:	29	Total:	61
Revocation		**4**		**10**		**11**		**27**
Revocation Stayed: Suspension		**2**		**4**		**3**		**14**
Revocation Stayed: Probation		**3**		**2**		**9**		**11**
Suspension Stayed: Probation		**0**		**0**		**1**		**1**
Voluntary Surrender		**0**		**0**		**5**		**7**
Public Reprimand		**0**		**0**		**0**		**1**
Default Decisions	Total:	10	Total:	8	Total:	3	Total:	18

[a]This was the first year the Board utilized the Teale Data Enforcement Tracking System. The data entered into the unprofessional conduct category and was not broken down into separate violation categories.

Enforcement Program Overview

The Board receives, on average, 650 complaints against licensees per year from either internal or external sources. Like most regulatory programs, this Board's enforcement efforts are complaint driven and the majority of complaints come from the public. The most common issue in consumer complaints is sexual misconduct or other type of inappropriate behavior in a clinical setting. Another significant area of complaint against chiropractors is workers' compensation and insurance fraud, and the Board participates in multi-agency health care fraud task forces. However, it is not clear that the Board has structures in place to receive information on civil actions brought against its licensees.

Figure 8 summarizes the Board's enforcement activities over the past four years. As the table shows in the complaints filed by type category, the largest number of complaints filed (over 30 percent of complaints filed in 1998-99) are in the area of unprofessional conduct.

The Board can respond to internal and external complaints in the following ways: dismissal, informal or formal investigation, accusation filing, and/or disciplinary action. Figure 9 shows the Board's history with disposition of complaints. The Board, on average over the past four years, formally investigated and took disciplinary action against 5 percent of complaints filed. The Board's data show a steady increase in the number of cases going to formal accusation and disciplinary action.

Figure 9 – Disposition of Complaints

NUMBER AND PERCENTAGE OF COMPLAINTS DISMISSED, REFERRED FOR INVESTIGATION, TO ACCUSATION AND FOR DISCIPLINARY ACTION				
	FY 1995/96	**FY 1996/97**	**FY 1997/98**	**FY 1998/99**
COMPLAINTS RECEIVED	**585**	**664**	**488**	**543**
Complaints Closed[a]	**N/A**	**N/A**	**638**	**621**
Referred for Investigation	**N/A**	**N/A**	**66 (11%)**	**79 (15%)**
Accusation Filed	**N/A**	**12 (2%)**	**26 (4%)**	**62 (11%)**
Disciplinary Action	**9 (2%)**	**16 (2%)**	**25 (4%)**	**61 (11%)**

[a]May include carry-over complaints received in prior fiscal years.

Case Aging Data

As the data in Figure 10 indicates, the Board has taken an average of 2.5 years, over the past two years, to achieve final disposition of enforcement cases. Investigative timeframes appear to be a significant factor in case aging determination.

Figure 10 – Case Aging Information

AVERAGE DAYS TO PROCESS COMPLAINTS, INVESTIGATE AND PROSECUTE CASES				
	FY 1995/96	**FY 1996/97**	**FY 1997/98**	**FY 1998/99**
Complaint Processing	**N/A**	**121**	**187**	**142**
Investigations	**N/A**	**233**	**373**	**368**
Pre-Accusation*	**N/A**	**N/A**	**166**	**305**
Post-Accusation**	**N/A**	**N/A**	**326**	**308**
TOTAL AVERAGE DAYS* **	**N/A**	**N/A**	**847**	**874**

*****From completed investigation to formal charges being filed.
******From formal charges filed to conclusion of disciplinary case.
*******From date complaint received to date of final disposition of disciplinary case.

Due to limited data, it is difficult to draw any overall conclusion about the Board's record with investigative timeframes and the Attorney General's prosecution of enforcement cases. At this time, it appears that the bulk of investigations take between one and two years to complete. Also, it appears that there is an increase in the number of cases that the Board is closing each year.

Figure 11 – Case Aging Data – Investigations and Prosecution

INVESTIGATIONS CLOSED WITHIN:	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
1-90 Days	**N/A**	**6**	**0**	**2**
91-180 Days	**N/A**	**2**	**3**	**2**
181-365 Days	**N/A**	**5**	**7**	**6**
366-730 Days	**N/A**	**9**	**16**	**14**
731-1096 Days	**N/A**	**3**	**2**	**10**
More than 1096 Days	**N/A**	**0**	**2**	**1**
Total Cases Closed	**N/A**	**25**	**30**	**35**
Investigations Pending	N/A	N/A	63	85
AG CASES CLOSED WITHIN:	**FY 1995/96**	**FY 1996/97**	**FY 1997/98**	**FY 1998/99**
1 Year	**N/A**	**N/A**	**5**	**28**
2 Years	**N/A**	**N/A**	**5**	**10**
3 Years	**N/A**	**N/A**	**2**	**3**
4 Years	**N/A**	**N/A**	**0**	**2**
Over 4 Years	**N/A**	**N/A**	**0**	**5**
Total Cases Closed	N/A	N/A	12	48
Disciplinary Cases Pending	**N/A**	**N/A**	**71**	**62**

Cite and Fine Program

The Board currently does not have authority for a cite and fine program, which serves as a less costly administrative alternative to formal disciplinary action. Regulations are pending to establish a cite and fine program for the Board. In addition, it may be necessary to make a statutory change to add the Board to the general cite and fine authority that exists for all other Department boards.

Diversion Program

Unlike some other health care regulatory boards, this Board does not operate a diversion program. Rather, chiropractors disciplined for substance abuse are required, at their cost, to participate in a Board-approved private rehabilitation program.

Results of Complainant Survey

In general, respondents to the complainant survey seem satisfied with the Board. However, there is one significant area where respondents indicated strong dissatisfaction with the Board – final complaint disposition. The Board's sunset review report suggests that the poor management of the enforcement program under the previous staff may be responsible for the level of dissatisfaction with the complaint intake process. In response to the survey results, the Board has indicated that it will monitor the complaint process for improved efficiency and better outcomes.

Figure 12 – Consumer Satisfaction Survey

CONSUMER SATISFACTION SURVEY RESULTS*		
QUESTIONS	**RESPONSES**	
# Surveys Mailed: 250 **# Surveys Returned:** **77** (31%)	***SATISFIED (3,4,5)*** ***5 4 3***	***DISSATISFIED (1,2)*** ***2 1***
1. Were you satisfied with knowing where to file a complaint and whom to contact?	**55 (79%)**	**15 (21%)**
2. When you initially contacted the Board, were you satisfied with the way you were treated and how your complaint was handled?	**46 (64%)**	**26 (36%)**
3. Were you satisfied with the information and advice you received on the handling of your complaint and any further action the Board would take?	**32 (43%)**	**43 (57%)**
4. Were you satisfied with the way the Board kept you informed about the status of your complaint?	**32 (43%)**	**43 (57%)**
5. Were you satisfied with the time it took to process your complaint and to investigate, settle, or prosecute your case?	**30 (41%)**	**43 (59%)**
6. Were you satisfied with the final outcome of your case?	**16 (23%)**	**54 (77%)**
7. Were you satisfied with the overall service provided by the Board?	**25 (36%)**	**45 (64%)**

*****The JLSRC directed all board's and committee's under review this year, to conduct a consumer satisfaction survey to determine the public's views on certain case handling parameters. (The Department of Consumer Affairs currently performs a similar review for all of its bureau's.) The JLSRC supplied both a sample format and a list of seven questions, and indicated that a random sampling should be made of closed complaints for a four-year period. Consumers who filed complaints were asked to review the questions and respond to a 5-point grading scale (i.e., 5=satisfied to 1=dissatisfied).

ENFORCEMENT EXPENDITURES AND COST RECOVERY

Average Costs for Disciplinary Cases

Average costs to investigate and prosecute cases over the past two years have ranged from $12,500 to $23,500. Expenditures on disciplinary cases appear to be higher for prosecution/hearing costs than for investigation costs (see Figure 13). Based on the data reported, there are no apparent trends in the Board's enforcement costs.

Figure 13 – Investigation and Prosecution/Hearing Costs Per Case

AVERAGE COST PER CASE INVESTIGATED	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
Cost of Investigation & Experts	$359,755	$262,631	$164,935	$175,000
Number of Cases Closed	N/A	N/A	30	35
Average Cost Per Case	N/A	N/A	$5,498	$5,002
AVERAGE COST PER CASE REFERRED TO AG	**FY 1995/96**	**FY 1996/97**	**FY 1997/98**	**FY 1998/99**
Cost of Prosecution & Hearings	$596,966	$520,226	$578,343	$469,000
Number of Cases Referred	31	42	32	62
Average Cost Per Case	$19,257	$12,386	$18,073	$7,565
AVERAGE COST PER DISCIPLINARY CASE	N/A	N/A	$23,571	$12,567

Cost Recovery Efforts

The Board has had the authority since 1997 to recover costs associated with investigating and prosecuting enforcement cases. This authority exists through Board regulations, but is not in statute.

Figure 14 reflects the amount of cost recovery the board has requested and received over the past four fiscal years. To date, the Board has collected $67,000 in cost recovery. Approximately 1 percent of the Board's annual budget is returned each year via cost recovery payments. Based on the data reported, it would appear that the Board is steadily improving its efforts to recoup costs associated with its enforcement efforts. However, the Board needs to be more aggressive in pursuing cost recovery as a means to reduce enforcement expenditures.

The Board may wish to consider participating in the Franchise Tax Board's Interagency Intercept Collections Program, which allows boards to collect unpaid cost recovery from tax refunds and lottery winnings. In addition, the Board should adopt its cost recovery program in statute so as to remove any question as to whether the Board has the authority to order repayment from its licensees.

Figure 14 – Cost Recovery

COST RECOVERY DATA	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
Enforcement Expenditures	$956,721	$782,857	$743,278	$644,000
Potential Cases for Recovery[a]	N/A	16	12	12
Cases Recovery Ordered	N/A	$32,435	$22,750	$155,767
Amount Collected	N/A[b]	$18,000	$18,000	$31,000

[a]The "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on a violation, or violations, of the Chiropractic Practice Act.
[b]Cost recovery authority was effective July 1996.

RESTITUTION PROVIDED TO CONSUMERS

The Board does not have a formal restitution program to collect monetary damages for patients harmed by licensee incompetence or negligence. According to the Board, restitution in chiropractic cases generally is associated with criminal cases and is ordered by the court prior to the Board ‘s involvement. Thus, the Board does not pursue restitution for individual complainants.

COMPLAINT DISCLOSURE POLICY

The Board’s complaint disclosure policy is similar to that of all other regulatory boards. It discloses disciplinary information upon request and in accordance with the California Public Information Act. The Board releases disciplinary information to the public at the time of case referral to the Attorney General, which is prior to formal filing of accusations. Final disposition on formally charged cases also is available.

The Board uses its regular newsletter that is circulated among licensees and the medical community to publish information on disciplinary actions. In addition, the Board reports monthly disciplinary information to the nations Chiropractic Information Network, which is available to the public. Lastly, the Board plans to provide disciplinary information on its Internet website.

CONSUMER OUTREACH AND EDUCATION

The Board operates a fairly standard consumer outreach program including distribution of consumer education materials, use of the media, and publication of both a biannual licensee newsletter and disciplinary report. In addition, the Board’s new Internet website will contain consumer information, complaint instructions, and enforcement data.

PART 2.

Board of Chiropractic Examiners

BACKGROUND PAPER FOR 1999 PUBLIC HEARING

Identified Issues, Background Concerning Issues, Staff Recommendations and Questions for the Board

CURRENT SUNSET REVIEW ISSUES: This is an initial review of the Board of Chiropractic Examiners pursuant to Section 101.1 and Section 473.15 of the Business and Professions Code. The following are issues or problem areas identified by JLSRC staff, along with background information concerning the particular issue. Where necessary, the staff of the JLSRC have made preliminary recommendations for members and Department of Consumer Affairs to consider. There are also questions that staff have prepared concerning the particular issue. The Board was provided with these questions and should address each one.

ISSUE #1. SHOULD THE BOARD RESIDE WITH THE DEPARTMENT OF CONSUMER AFFAIRS AND SHOULD THE CHIROPRACTIC ACT AND ITS RELATED REGULATIONS BE CODIFIED IN STATUTE?

BACKGROUND: Unlike the state's 32 other professional licensing programs that operate as semi-independent units of the Department of Consumer Affairs (Department), this Board is completely independent of Department oversight and is not subject to direct legislative authority.

This Board is unique because its licensing act was created by an initiative in 1922 rather than by statutory enactment. Therefore, the Chiropractic Act (Act) and its supporting regulations are uncodified and past changes made to the Act had to be submitted to the voters for approval. Furthermore, it is unclear whether the Legislature has the authority to further amend, revise, supplement, or codify provisions of the Act.

The Act currently provides for a Board consisting of five professional (doctors of chiropractic) members and two public members. The Governor appoints all members of the Board. The Board is granted exclusive power to issue a license to those who graduate from a chiropractic medical school. This Board operates freely without any oversight of a state department or agency, nor does it have to meet any of the general requirements and provisions established under Division 1 and 1.5 of the Business and Professions Code for all other licensing boards under the Department. Past legislative amendments to the Act have been through voter-approved

initiatives[3]. Thus, the Legislature has no direct ability to amend the Act. Therefore, it has no authority to place a sunset date on this Board, and may not have the authority to subject it to the jurisdiction of the Department.

A 1983 court case related to the Osteopathic Board, which also was created by initiative, suggests that the Legislature does have the authority to make changes to practice acts created by initiative. Although the court decided in favor of the Legislature on this occasion, there is still some question as to the full extent of the Legislature's authority. Therefore, there should be definitive clarification of the Legislature's authority to propose statutory changes that are necessary to improve the overall effectiveness and efficiency of this Board. Rather than having to pursue litigation to implement changes to the Act, both the Department and the Legislature should be vested with oversight of the Board. The current structure has produced a perception of a lack of accountability on the part of the Board.

The Center for Public Interest Law (CPIL) have recommended that this Board, along with the Osteopathic Board, be treated the same as other licensing boards under the Department, and that their initiative provisions be codified and subject to change or revision by the Legislature without having to seek a vote of the electorate. In 1993, the Legislative Analyst's Office (LAO) recommended that all boards be consolidated under the Department including the Board of Chiropractors. It should be noted that there is precedent for the Board to be a part of the Department. Apparently, the Board, on its own initiative, decided by resolution to join the Department sometime in the 1940s and then left the Department in the mid 1970s. Additionally, codification of the Act and supporting regulations would protect the Board against legal challenges questioning their authority.

Prior to placing the Board under Department jurisdiction and codifying the Act, it should be made clear that the Legislature may not repeal the licensing of this profession. The Chiropractic Act was adopted by initiative in response to efforts by other segments of the medical community to prohibit their right to existence altogether. While it seems unlikely in this day and age that anyone would suggest abolishing licensure for chiropractors, there is some justifiable concern that moving the Board to the Department could potentially jeopardize the standing of the chiropractic profession. However, the benefits to consumer protection from rational government organization, modern public resource management, and reasonable legislative oversight outweigh any concerns the profession may have.

STAFF RECOMMENDATION: ***The law should be amended by a vote of the electorate, placed on the ballot by the Legislature, ensuring the existence of licensure for Doctors of Chiropractic in California, but in all other respects treating the regulatory program the same as all other health practitioner licensing boards.***

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[3] A partial history of amendments to the Chiropractic Act that were approved by initiative includes: Chapter 771, Statutes of 1975, SB 984, Alquist which increased the Board application fee from a maximum of $35 to $50 and the license renewal fee from a maximum of $25 to $50; Chapter 263, Statutes of 1976, SB 1416, Rodda which added two public members to the Board's existing five professional member composition; Chapter 306, Statures of 1978, AB 2380, McVittie which increased the application and renewal fees from a maximum of $50 to $75; Chapter 307, Statutes of 1976, SB 1671, Rodda which changed the requirements for approval of chiropractic colleges; and Chapter 533, Statutes of 1983, SB 286, Rosenthal which increased the application and license renewal fees from a maximum of $75 to $100 and $150, respectively.

QUESTION #1 FOR THE BOARD: ***Please indicate if the Board has any concerns about amending the initiative act so that it may be treated like other licensing boards under the Department of Consumer Affairs. In addition, please indicate the extent to which some or all of the changes in law necessary to accomplish parity of treatment could be accomplished without a vote of the electorate.***

ISSUE #2. THERE HAVE BEEN SOME LONG-STANDING MANAGEMENT DEFICIENCIES WITH THE BOARD.

BACKGROUND: Past operational problems with this Board include: (1) budget problems that resulted in illegal deficit spending and suspension of enforcement cases because of insufficient funds; (2) inconsistent and inappropriate application of chiropractic practice laws and regulations; (3) staffing problems; (4) lack of cite and fine program; (5) no measurable consumer outreach or education efforts; (6) backlog of enforcement cases; (7) focus on micro-managing of staff rather than policy-making or long-range planning.

The Board has had some long-standing management deficiencies including budget shortfalls and excess reserves, low employee morale, inadequate data reporting systems, and lack of long-range planning. Recent staffing changes have resulted in promising improvements in the day-to-day management of Board operations. However, the Board itself as a policy making body needs to show more leadership in its enforcement of the Chiropractic Act, as opposed to relying on an overly technical, highly bureaucratic approach to chiropractic discipline.

STAFF RECOMMENDATION: ***The Board should conduct a thorough review of all regulations and codify those that have been challenged and strengthen those that are considered weak. The Board should also consider streamlining certain operations such as switching to a biennial license renewal system and ensuring that it is recovering its costs for administering the California portion of the licensing examination. Board members should consider trends in the industry and establish proactive policies to address new enforcement challenges. For example, there are a number of practice issues that the Board should address, including the use of the title "chiropractic orthopedist"; the use of experimental devices and "alternative" products such as laser facelifts, hair analysis, use of homeopathic products, thermography, radiation detectors; written procedures for the use of x-rays; authority to conduct physicals for participation in school sports; establishing a minimum training requirement for non chiropractors wishing to perform adjustments or manipulation; and clarifying the standard on physical therapy procedures in chiropractic practice.***

QUESTION #2 FOR THE BOARD: ***What were some of the long-standing deficiencies with the Board and what has been done to rectify these problem areas? What is the Board's plan for addressing identified scope of practice issues?***

ISSUE #3. THE BOARD HAS BEEN CRITICIZED FOR A LAX ENFORCEMENT PROGRAM.

BACKGROUND: The Board has made significant efforts to improve its enforcement program, such as shortening the time frame for the handling of complaints and investigations. Nonetheless, some have argued that the enforcement program for this Board is almost nonexistent. There are at least three areas where the Board could enhance its consumer protection role. For example, the standard time frame for the handling of complaints is still approximately six months, and a substantial number of investigations take from one to two years to complete before any legal action is taken. Furthermore, the Board's consumer satisfaction survey indicated that more than 50% of respondents were dissatisfied with the Board's disposition of enforcement cases. Like other boards that have gone through the sunset review process, the Board should attempt to reengineer its enforcement process to shorten the time frame for investigations.

Additionally, the Board does not have structures in place to receive information on civil actions brought against its licensees. Most health care related boards have established mandatory reporting procedures with the courts, insurance carriers, and hospitals on civil actions brought against their licensees. This information has proven to be a valuable tool in identifying potentially dangerous medical practitioners.

Lastly, the Board may want to improve its ability to take immediate action when public safety is jeopardized by one of its licensees. The Board currently has the authority to temporarily restrain a license. This process requires a judicial or administrative hearing first. Other health-related boards have explored the possibility of obtaining summary suspension authority in cases of egregious alleged violations of the law or where there is a dire threat to patient safety. A variation of this would be to further require that the Executive Director also obtain the concurrence of the Board's President prior to proceeding with the suspension (a "dual signature authority").

There would be very few instances where such authority would be necessary, but there could be circumstances where immediately removing a dangerous practitioner from practice is warranted. The current administrative Interim Suspension Order (ISO) and the judicial Temporary Restraining Order (TRO) are time-consuming and costly and not effective under these circumstances.

STAFF RECOMMENDATION: ***The Board should adopt the best practices of other boards that have strong enforcement programs. Examples of these practices include streamlining complaint processing, better coordination with the Attorney General's Office on case investigation and prosecution, and enhanced disciplinary authority such as summary suspension.*** **(Use of Dept of Insurance investigators for cases unrelated to insurance issues?)**

QUESTION #3 FOR THE BOARD: ***What changes should the Board make to improve the effectiveness and efficiency of its enforcement program? What agencies does this Board use to investigate complaints before they may be referred for disciplinary action? Is the Department of Insurance used, and are the cases investigated by this Department all related to insurance issues?***

ISSUE #4. THE BOARD HAS BEEN UNABLE TO ADOPT REGULATIONS ESTABLISHING A "CITE AND FINE" PROGRAM SIMILAR TO OTHER BOARDS.

BACKGROUND: The Business and Professions Code provides that "any board, bureau, or commission within the department" may adopt by regulation a system whereby a citation could be issued containing an order of abatement or an order to pay an administrative fine. Fines are capped at $2,500 per violation, and the statute provides for a hearing procedure in the event the licensee elects to contest the order.

Because the Board is not "within the department" as required by the statute, it has not adopted a regulation to establish a cite and fine program as authorized for virtually all other licensing boards. This authority is a valuable tool for regulators because it provides an expedited procedure to enforce the law where the violation(s) may be relatively minor, and the formal due process required for license suspension or revocation would lead to prohibitive costs. It can also be a valuable tool when the violation(s) relate to financial issues and are not direct quality of care violations. According to the Board, adoption of the regulation is pending.

STAFF RECOMMENDATION: ***The statute should be amended to authorize the Board to adopt cite and fine regulations in the same manner and to the same extent as other boards, bureaus, or commissions. It appears probable that this sort of amendment can be done through a legislatively enacted statute.***

QUESTION #4 FOR THE BOARD: ***Is it your opinion that the Legislature has the authority to enact a cite and fine program for the Board?***

ISSUE #5. THE BOARD MAY BE IN NEED OF ADDITIONAL POSITIONS TO OPERATE ITS LICENSING AND ENFORCEMENT PROGRAMS.

BACKGROUND The Board currently has 10 staff positions, which is similar to other boards that have an equivalent number of licensees. However, because the Board is independent of the Department, it appears that it currently lacks staff resources to perform a range of functions that could improve its ability to carry out its enforcement program, as well as prepare and analyze data related to its enforcement operations. The Board does not have staff resources to manage electronic data that could provide valuable analytical information.

Presently, the Board has ample fund resources, and fees are relatively low in comparison to what physicians pay in licensing fees to the Medical Board of California. The Medical Board, however, is able to carry out a more sophisticated enforcement program; it can track and monitor

its cases better; it can manage its expenses better; and it can respond to requests for data better. Chiropractors are practitioners of medicine, and it makes little sense to provide better tools to one regulator of health care providers than to others.

STAFF RECOMMENDATION: ***The Board should continue to pursue creation of additional staff positions that would enable it to rapidly improve its data collection and management, better monitor its enforcement caseload, and improve follow-up on licensees that are subject to discipline.***

QUESTION #5 FOR BOARD: ***Has the Board identified future staffing needs? Is the Board prepared to justify the addition of new staff to the Committee, as well as to the Department of Finance?***

ISSUE #6. THE BOARD HAS AN EXCESSIVE FUND RESERVE OF ALMOST TWO YEARS OF BUDGETARY EXPENDITURES.

BACKGROUND: The Board has over $3.6 million in reserve for the current fiscal year, which is twice its annual budget. This reserve is expected to grow to $4.5 million in two years. Clearly, this is an excessive amount to keep in reserve. Generally, a three- to six-month reserve is recommended as a prudent amount. Unlike other special funded programs, this Board was not subject to a General Fund transfer during the early 1990s state fiscal crisis. Thus, the Board's reserve level cannot be attributed to a one-time return of monies. Though it is difficult to isolate the cause of the growing reserve, this trend in troubling given that the Board has been criticized for lax enforcement efforts.

The Board should develop a plan for spending down its reserves. Options to do this include temporarily reducing fees, funding one-time projects such as information technology upgrades, and dedicating more resources to enforcement. Before selecting any of these options, the Board needs to carefully evaluate its long-term funding requirements.

STAFF RECOMMENDATION: ***The Board should reduce its reserve by upgrading its information systems and initiating other one-time expenditures on programs such as consumer outreach. If Board revenues are projected to remain stable, the Board should consider reducing license renewal fees for a limited time period.***

QUESTION #6 FOR BOARD: ***Has the board evaluated how to better manage its budget so that an excess reserve will not continue? What is the Board's long-term plan for ensuring adequate and stable funding for its operations?***

ISSUE #7. SHOULD THE COMPOSITION OF THE BOARD BE CHANGED?

BACKGROUND: The Board's current composition of five professional and two public members may not be in the best interest of consumer protection. Generally, a public member majority for occupational regulatory boards or greater representation of the public where current board membership is heavily weighted in favor of the profession is preferred for consumer protection. Since any regulatory program's primary purpose is to protect the public and there is a perception that this Board has been less than proactive in performing its consumer protection role, increasing the public's representation on this Board assures the public that the profession's interests do not outweigh what is in the best interest of the public. *Requiring closer parity between public and professional members* is also consistent with both this Committee's and the Department's recommendations regarding other boards that have undergone sunset review.

STAFF RECOMMENDATION: ***To be consistent with the general recommendation for increased public membership, Committee staff recommends removing one professional member from the Board and adding one public member.***

QUESTION #7 FOR THE BOARD: ***How would restructuring the composition of the board to achieve greater public representation affect its mission?***

PART 3.

Board of Chiropractic Examiners

BOARD'S RESPONSE TO ISSUES AND RECOMMENDATIONS FROM 1999/2000 SUNSET REVIEW

Board Operations

1. **What regulations have been adopted for effective enforcement and administration of the Chiropractic Act?**

Division 4 of Title 16 of the California Code of Regulations contains regulations that have been adopted to interpret or operationalize provisions of the Chiropractic Initiative Act. These regulations are divided into nine articles as follows:

Article 1. General Provisions
Article 2. Practice of Chiropractic
Article 3. Application for License to Practice Chiropractic
Article 4. Approved Schools and Qualifications of Applicants
Article 5. Examinations
Article 6. Continuing Education
Article 7. Chiropractic Corporations
Article 8. Conflict of Interest Code
Article 9. Enforcement and Discipline

Since 1996, regulatory revisions or amendments have addressed the following topics:

a) Amendment of the examination provisions to make the national examination and a California Law Examination (CLE) requirements for licensure. (CCR section 349, effective July 1, 1996.)
b) Amendment of the existing regulation regarding responsibility for conduct on premises to make the commission of any act of sexual abuse, sexual misconduct, or sexual relations by a licensee with a patient, client, customer or employee as unprofessional conduct and cause for disciplinary action and defining such conduct as substantially related to the qualifications, functions, or duties of a chiropractic license. (CCR section 316(c), effective July 29, 1996.)
c) Amendment of the provision defining unprofessional conduct to provide that a plea or verdict of guilty, or a plea of nolo contendere is deemed to be a conviction within the meaning of the

board's disciplinary provisions and that the board may order a license to be suspended or revoked, or may decline to issue a license upon the entering of a conviction or judgment in a criminal matter. (CCR section 317(h), effective July 29, 1996.)

d) Addition of cost recovery. (CCR section 317.5, effective July 29, 1996.)

e) Five (5) years of chiropractic practice in another jurisdiction as one requirement for reciprocal licensure. (CCR section 323(h), effective July 29, 1996.)

f) Revision of continuing education program and requirements for qualification as a course provider. (CCR section 356, 356.5, 357, 358, effective March 22, 1999.)

g) Incorporation of disciplinary guidelines into the regulations. (CCR section 384, effective July 15, 1999.)

h) Inclusion of a provision authorizing negotiation of probationary licensure for applicants in specified circumstances. (CCR section 325, effective December 2, 1999.)

2. **Should the Board change to a biennial license renewal system?**

The Board does not see any particular benefit to be derived from converting to a biennial license renewal system. Licensees are accustomed to paying $150.00 annually and some would balk at being asked to prepare instead one check for $300.00, in spite of the fact that it would cover two years of licensure. Such a change would require amendment of the Chiropractic Initiative Act which presently specifies an annual renewal process. Reinstatement provisions would also have to be addressed, since the Initiative Act requires payment of a reinstatement fee that is "twice the annual amount" of the renewal fee.

3. **Should the Board increase its staff in order to improve its enforcement program, conduct outreach, and improve its overall effectiveness?**

The Board believes that an augmentation of the existing staff would enhance its ability to carry out its programs and has plans pending to facilitate a staffing increase. These plans include addition of an assistant executive director position, and increasing three part-time positions to full-time. These three positions include the chiropractic consultant, a half-time receptionist, and a 3/5 time clerical worker assigned to the licensing unit. Increasing these positions will allow the board to add chiropractic college liaison duties and expert witness training to the duties of the chiropractic consultant and will also support implementation of an improved continuing education compliance audit and addition of work with chiropractic referral services and chiropractic corporation registrations to the licensing position. Increasing the receptionist position to full-time will allow a realignment of duties so that the staff member performing cashiering duties may assume other related functions that are currently backlogged.

Budget

4. **How does the Board propose to reduce its fund reserve? Has the Board considered reducing fees or making one-time expenditures for major purchases, such as information systems upgrades?**

A prior experience with litigation defending the chiropractic scope of practice resulted in very high legal defense expenditures. The Board has elected to maintain a reserve sufficient to cover

any such legal defense expenditures, should the situation arise again. Additionally, as indicated in the response to question 3, the Board is planning staff increases that would require support from reserve funds. Another possibility to be considered will be a short-term reduction in fees, for example cutting fees in half for two years. This would require action from the Legislature since Section 12.5 of the Chiropractic Initiative Act authorizes the Legislature to set renewal fees by law.

5. **Is the Board recovering its costs for administering the California portion of the licensing examination? Does the Board charge a separate examination fee or does the current license fee of $100 include examination costs?**

The $100 license application fee does not include any examination costs. Applicants are required to take the national licensing examination administered by the National Board of Chiropractic Examiners (NBCE). National examination fees are paid directly to the NBCE which in turn sends examination score reports to the states in which the applicant is applying for licensure. The California Law Examination (CLE) is also required of California applicants. It is not administered by the Board and there is, therefore, no board cost associated with its administration. The Board has a contract with Cooperative Personnel Services (CPS) for development and administration of the CLE. One-time development and start up costs were paid to CPS by the Board in FY 1996-97. Since that time, all maintenance and administration costs are supported by the registration fee each applicant pays directly to CPS when registering to take the examination.

6. **Why are expenditures on administrative functions high in comparison to what other health care regulatory boards spend? Why aren't examination costs available for the last two fiscal years?**

As explained in the response to question 5, there have been no examination costs for the last two fiscal years due to the Board's shift to accepting scores from the national examination and development and administration of the California Law Examination by an outside testing firm. The Board expects to continue this arrangement and does not plan to resume examination administration activities.

The Board embarked upon a major reorganization process in 1996. As a result, administrative costs have been higher than normal. Costly activities have included moving to a larger and safer office; surveying out mis-matched office furnishings (some items were purchased at garage sales) and upgrading office appearance by re-upholstering furniture and adding standard state furnishings; purchasing a new computer for each staff work station; creating and maintaining a local area network (LAN); acquiring Internet access for staff to utilize in research and for access to the CIN-BAD national data base which provides information on chiropractic licensees from all states. Part of this reorganization has included closer monitoring and control of enforcement expenditures that were formerly out of control. While the projects above may have increased administrative expenditures, strong management of the enforcement program has resulted in an increase in revocations and disciplinary actions with a concomitant reduction in enforcement expenditures. We know that it is common to compare a board's administrative costs with enforcement costs and this reduction in the cost of enforcement may have contributed to the

perception that administrative costs are high. It should be noted, however, that many of the administrative costs (i.e. expansion of office space, computers, Internet access) have directly supported enhancement of the enforcement program.

Scope of Practice and Related Issues

7. **Is the use of the word "physiotherapy" misleading?**

No; this word is an older term which has generally been replaced by "physical therapy". The licensed chiropractor must only use physical therapy/physiotherapy procedures in a course of chiropractic manipulations. In order to avoid being mistaken for a physical therapist, chiropractors generally use the term "physiotherapy".

8. **When did the Board adopt rules and standards of professional conduct and are they part of the regulations for the Board? Are violations of these standards unprofessional conduct?**

Section 317 of Title 16, Division 4 of the California Code of Regulations pertains to unprofessional conduct. It appears that this section was included in the boards first regulations which were originally printed December 5, 1946. Board records show fourteen amendments to this section since that time, and one amendment to it is currently pending. Thus, the standards of professional conduct are dynamic and able to keep pace with changing times.

9. **Does the Board have authority (under what part of the Initiative Act) to designate "Chiropractic Orthopedist" as a title restriction?**

The Chiropractic Initiative Act does not specifically grant the Board power to designate "Chiropractic Orthopedist" as a title restriction. This title is a speciality certification granted by the American Board of Chiropractic Orthopedists. That board is a function of the Council on Orthopedics of the American Chiropractic Association. In order to be granted this specialty certification, a chiropractor must take a two-year, non-resident course and pass an examination offered by the speciality board. Upon completion of the course and passing the examination, a chiropractor will be granted diplomate status and is allowed to use the DABCO title, Diplomate American Board of Chiropractic Orthopedists. The California Board has issued a policy statement to the effect that no licensee may use the DABCO title unless granted that status by the American Board of Chiropractic Orthopedists. The issue of specialty certification is not addressed in either the Initiative Act or the Board's regulations.

10. **Why aren't the current Procedural Terminology Codes mandatory?**

Current Procedural Terminology (CPT) codes were developed by the American Medical Association and other collaborators to standardize terminology describing health care procedures. It has long been Board policy to encourage use of CPT codes, and generally speaking, insurance carriers require use of these codes when submitting insurance forms. As a result, most chiropractors routinely use CPT codes when billing for services, and there is no need for this Board to regulate their use. Medicare and Workers' Compensation programs require use

of other codes, so mandating use of CPT codes would have a detrimantal affect upon a licensee's ability to meet the requirements of these important programs.

11. **What direction has the Board given on the use of testing (or experimental) devices, and shouldn't the Board have authority over their uses? How does the Board determine if a testing device is appropriate and falls within accepted standards of practice?**

The Board has issued information pieces pertaining to the use of various devices and whether or not they are acceptable for use by a chiropractor. The Board has stated that devices must have been approved by the Federal Food and Drug Administration (FDA) for use in treating humans before they may be utilized in patient care and that devices that fall within the scope of practice, but have not been tested as to efficacy, may only be used for research purposes.

12. **Does the Board have authority to discipline licensees for using certain types of treatment or products used by chiropractors, especially if they are experimental in nature or untested? Such as "laser facelifts," "hair analysis (use of EMG/SEMG), use of homeopathic products, thermography, radiation detectors, etc.**

The Board has authority to discipline licensees who utilize techniques which are not within the scope of practice or devices which are not within the scope of practice or are not FDA approved. **Laser facelifts** are not within the scope of practice of a chiropractor. **Hair analysis** may only be used for mineral testing and must be done at a clinical laboratory. **SEMG** (Surface Electromyography) is a surface test which purports to elicit information regarding muscle spasm. However, it is a procedure which has been found not to be reliable and the results are not reproducible. The Board has stated that SEMG is investigational and routine patient use is not appropriate. **EMG** (Electromyography) is an invasive procedure involving needle insertion, and is not within the chiropractic scope of practice. The chiropractor may be charged with fraud if a CPT code for EMG is used for billing since this procedure is not permitted to the chiropractor, or if the EMG code is used when SEMG was actually provided. **Homeopathic products** may be used if they are packaged by the manufacturer and labeled according to state and federal laws with the directions on the label. This is considered to be proprietary medicine which may be used by the chiropractor. **Thermography** is within the scope of chiropractic practice. It may not be used alone, but must be used in conjunction with other diagnostic procedures and proper examination procedures. **Radiation detectors** are not used in chiropractic.

13. **What action [may be] taken against the unlicensed practice of chiropractic, such as an unlicensed person who has part ownership of a chiropractic practice corporation?**

The law specifically prohibits an unlicensed individual from ownership of a chiropractic corporation (CCR section 312.1). However, if an unlicensed individual were to practice chiropractic in a chiropractor's office, the Board would refer the case to the disctrict attorney's (DA) office in the county in which the unlicensed individual is practicing. The Board would also take action against the licensee who was aiding and abetting the unlicensed practice.

In the past, the Board investigated unlicensed practice cases and presented the full investigative report to the appropriate DA's office. Experience has shown, however, that these cases are generally closed without prosecution so that the DA could apply limited resources to prosecution of cases involving violent crimes. Given this track record, the Board found it was not cost effective to investigate these cases prior to submitting them to the DA and has discontinued that practice.

14. **Are there written procedures provided by the Board for use of X-rays by chiropractic practitioners?**

The Department of Health Services Bureau of Radiological Health issues the X-ray Supervisor and Operator Permit. Any chiropractor who wishes to operate or supervise operation of X-ray equipment must have such a permit. Regulations of the Bureau deal with the use of X-ray equipment and patient protection procedures. Representatives of the Bureau periodically inspect X-ray facilities and equipment utilized by permit holders.

The Chiropractic Initiative Act prescribes a chiropractic curriculum which includes radiological technology, safety and interpretation. In addition, section 331.12.2 of the California Code of regulations requires, among other things, that the curriculum must include X-ray technique and radiation protection.

15. **What is the Board's policy on chiropractors conducting physicals for school sports? Does the chiropractic scope of practice confer this authority on licensees?**

Section 302 of the California Code of Regulations states that a duly licensed chiropractor may treat any condition, disease or injury and may diagnose, so long as such treatment or diagnosis is done in a manner consistent with chiropractic methods. This authorization to examine patients and diagnose makes the conducting of physicals for school sports within the chiropractic scope of practice. If in the course of performing such a physical examination, the chiropractor idendifies a condition that requires medical treatment, the chiropractor is required to make an appropriate medical referral. Failure to make such a referral consititutes unprofessional conduct as specified in section 317(v) of the regulations.

16. **Should the chiropractic scope of practice be defined in statute rather than by regulation? Accordingly, should the chiropractic scope of practice be updated to reflect practice changes?**

The scope of practice is defined in section 7 of the Chiropractic Initiative Act which states that the license shall authorize the holder thereof to practice chiropractic as taught in chiropractic schools or colleges. Courts have held that this has a clear meaning in that it was defined in 1922. Any advances in the practice of chiropractic will be in diagnostic and/or treatment procedures and will be incorporated into the school curriculum. Section 302 of the regulations interprets and applies section 7 of the Initiative Act.

17. **Has the Board considered establishing a minimum training requirement for anyone wishing to perform adjustments or manipulation?**

No. The requirements for performing manipulations or adjustments include the knowledge of anatomy, physiology, diagnosis and other subject matter which would enable the health care practitioner to properly diagnose the problem and to accurately deliver the correct manipulation. Therefore, one must undergo the full chiropractic curriculum in order to be fully qualified to perform chiropractic manipulation and for the protection of the health care consumer.

Enforcement

18. **What enforcement regulations have been submitted to OAL, and have they been approved?**

Since 1996, the following enforcement regulations have been submitted to OAL and have been approved?

a) Responsibility for Conduct on Premises: CCR section 316 (c), effective July 29, 1996.
b) Unprofessional Conduct: CCR section 317(h), effective July 29, 1996.
c) Cost Recovery: CCR section 317.5, effective July 29, 1996.
d) Disciplinary Guidelines: CCR section 384, effective July 15, 1999.
e) Denial of License Application; Issuance of Probationary License: CCR section 325, effective December 2, 1999.

19. **How does the Board find out about civil actions brought against its licensees?**

The Board is notified in cases that involve malpractice as required under Business and Professions Code section 802. All other civil actions are brought to the attention of the Board by either licensees or consumers.

20. **What type of enforcement problems, if any, have arisen from the standard on physical therapy procedures in chiropractic practice? Is the law sufficiently clear so that licensees understand their scope of practice?**

The law is very clear regarding the use of physical therapy procedures by a chiropractor, and since mid-1996, each new licensee is required to pass the California Law Examination which include questions on this aspect of the law. There are two types of enforcement issues related to physical therapy and chiropractic:

Advertising: Chiropractors advertising "physical therapy" on office signs, business cards, letterhead, or in other advertising are generally identified through the complaint process. When prima facie evidence is in hand, the Board addresses the matter by issuing a cease and desist letter. The licensee is ordered to cease the inappropriate advertising by a specified deadline and is admonished that further violations will be dealt with harshly.

Use of Physical Therapy Not in Conjunction With Chiropractic Manipulation: A few chiropractors have attempted to provide physical therapy procedures without providing chiropractic manipulation. When such a violation occurs, and it is a first offense, the licensee is

issued a ceast and desist letter. This letter advises the licensee of the violation and cautions the doctor that any further violation will be dealt with more vigorously.

Multiple offenses will result in formal disciplinary action.

Training

21. **Should the educational requirements for licensure be increased, such as adding additional clinical training requirements?**

Currently, the chiropractor obtains clinial experience in the college clinic during the last three years of the four-year curriculum. (Note that many students train throughout the calendar year, thus condensing four years of chiropractic college into three years.) Additionally, an increasing number of chiropractic students and recent graduates are participating in preceptorship programs. In a preceptorship program, the student serves as an extern under the guidance and supervision of a preceptor. The preceptor is a licensed chiropractor and this training occurs in the preceptor's office, rather than in the college clinic.

In recent years, there has been discussion at national meetings of the Federation of Chiropractic Licensing Boards (FCLB) and Council on Chiropractic Education (CCE) regarding educational requirements and whether or not it would be appropriate to increase the pre-chiropractic requirement to four years of undergraduate college work. California's Chiropractic Initiative Act requires a minimum of 60 credits (two years) of undergraduate prechiropractic training. The current national trend has been toward 90 credits (three years) and the majority of new chiropractic students are entering their chiropractic training with at least three years of undergraduate course work. The CCE is the national accrediting organization and in April 1999 announced plans to increase their admission standards to the 90 credit level. A few states have gone one step farther, and recently implemented bachelor's degree pre-chiropractic training requirements. This Board has been very interested in these discussions and believes it may well be advantageous to increase the pre-chiropractic educational requirement to four years of undergraduate college work. Given the high demand for chiropractic care in California, the Board's position of regulating the nation's largest licensee population, and the need to ensure an adequate flow of newly trained chiropractors, the Board has hesitated to step too far out in front on this issue. The Board has been pleased to work with the CCE to implement their broad-based changes and expects the CCE's next step within a few years to be requirement of a bachelor's degree.

Board Composition

22. **Should public members on the Board be increased? Does the Legislature have authority to change membership? What other authority does the Legislature have to amend or repeal portions of the Initiative Act?**

The Board recognizes the current trend toward an increase in public representation on regulatory boards and would welcome input from more public members. Current Board composition is five professional members and 2 public members. The Board would welcome an increase of 2 public

members bringing the board's composition to 5 professional members and 4 public members. This increase in public members may help increase the consumer perspective in board deliberations. However, it must be noted that in the past, many public members have been somewhat apathetic and failed to attend board meetings with regularity.

The issue of Board membership is addressed in the Chiropractic Initiative Act. Attorney General Opinion NS-5538 - November 16, 1944 states that "the Act does not contain a provision permitting the Legislalture to amend the statute" and it is our understanding that the only way the Act or any portion thereof may be amended or repealed is through the initiative process. There is one portion of the Act which specifically grants the Legislature some authority. That is Section 12.5 which authorizes the Legislature to set fees and compensation.

Oversight of Board

23. **Should the Board, along with the Osteopathic Board, be moved to the Department of Consumer Affairs?**

In 1946, this Board elected by resolution to affiliate with the Department of Consumer Affairs, then known as the Department of Professional and Vocational Standards. This decision was made after careful consideration and with the knowledge that Attorney General Opinion NS-5538 - November 16, 1944 made clear the Board's authority to withdraw from the department should it "decide to come into the department, but later decide that it would rather continue to act in its present capacity as an independent agency..."

In 1976, the Board elected by resolution to withdraw from the Department of Consumer Affairs. Attorney General Opinion CV75-214-August 13, 1976 supported the Board's authority to select that course of action. The Board's current staff competently and efficiently manages the Board's business. Although the Board currently purchases some services from the Deparmtent of Consumer Affairs, it also purchases services from the Department of General Services and wishes to continue that practice. In short, the Chiropractic Board has no desire to affiliate with or be placed under the jurisdiction of the Department of Consumer Affairs and sees no need for this to occur.

Industry Trends

24. **How will changes in the industry, such as managed care penetration and HMO/PPO reimbursement, affect the Board's mission?**

The Board maintains jurisdiction over licensees regardless of the health care plans or panels to which they belong. Managed care groups periodically verify licensure and disciplinary status as part of their own credentialing process and thus the Board's function of consumer protection through licensing remains an important component of managed care.

PART 4.

Board of Chiropractic Examiners

FINAL RECOMMENDATIONS OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE AND THE DEPARTMENT OF CONSUMER AFFAIRS

The Following Recommendations were Adopted by the Joint Legislative Sunset Review Committee on April 11, 2000 by a Vote Of 5 to 0:

ISSUE #1. (CONTINUE REGULATION OF THE PROFESSION?) Should the licensing and regulation of Doctors of Chiropractic be continued?

Recommendation #1: ***The Joint Committee and the Department recommends continued state regulation of this profession.***

Comments: Because chiropractors provide health care in the same manner as other independent health practitioners, and there are attendant public health and safety considerations, the Department recommends continued state regulation of this profession. Chiropractic care requires a high level of skill and extensive knowledge of the human body. Licensing chiropractors ensures that they have the necessary knowledge, skills, and abilities to provide care without causing harm. In addition, regulation of the profession creates an enforcement structure so that action can be taken when unsafe, fraudulent, or incompetent activities occur.

ISSUE #2. (CONTINUE WITH THE BOARD?) Should the Board be continued, or its role be limited to an advisory body and the remaining functions be transferred to the Department?

Recommendation #2: ***The Joint Committee and the Department recommends retaining the Board as the agency responsible for regulating the practice of chiropractic care. However, the Joint Committee recommends a review of this Board within two years to assure that past problems with the management and operation of this Board have been rectified.***

Comments: There were some long-standing staff and management deficiencies with this Board. The Board was also not taking an active role in assuring discipline of licensees who violated the Chiropractic Act, nor setting appropriate practice standards for the profession. Since 1996, the Board has been making attempts to rectify these problem areas, however, the Joint Committee and the Department should assure that this Board continues its efforts to provide improved consumer protection and addresses other issues as outlined in this report.

ISSUE #3. (PLACE THE BOARD UNDER THE JURISDICTION OF THE DEPARTMENT?) Should the Board of Chiropractic Examiners be placed under the jurisdiction of the Department of Consumer Affairs like all other health-related professional licensing boards?

Recommendation #3: ***The Joint Committee recommends that the status quo be maintained and that the Board not be placed under the jurisdiction of the Department. However, given the proven need for flexibility in modifying licensing laws and the potential benefits to the Board from the Department's expertise, the Department concurred with the Joint Committee's preliminary recommendation that the Legislature take action to place an initiative on the ballot to move the Board into the Department structure.***

Comments: The Board of Chiropractic Examiners is unusual among state regulatory entities since it is only one of two professional boards established by a voter-approved initiative, rather than by legislative action. Created in 1922, the Board regulates the practice of chiropractic care and is completely independent of the Department, which distinguishes it from the state's other health professional licensing programs. As a consequence, it is not subject to any oversight or administrative process review within the executive branch, as are other licensing boards under the Department. The current structure also prevents the Board from utilizing the Department's regulatory expertise and the administrative economies of scale available to other Department programs. It should be noted that there is precedent for the Board being under the Department as it was voluntarily housed in the Department from the 1940s to the 1970s.

ISSUE #4. (SHOULD ALL GENERAL REQUIREMENTS FOR OTHER HEALTH-RELATED LICENSING BOARDS APPLY TO THIS BOARD?) Should all general provisions (and future provisions) of the Business and Professions Code that apply to all other health-related licensing boards under the Department, apply to this Board?

Recommendation #4: ***The Joint Committee recommends that the Business and Professions Code should be amended so that, in all respects, this regulatory program will be subject to the same consumer protection requirements as all other health practitioner licensing boards. The Board should also pass regulations to implement these changes. If the Board is unable to adopt certain requirements, then it should seek the authority necessary under the Initiative Act to effect these changes.***

Comments: Under Section 4 of the Initiative Act, the Board may adopt such rules and regulations that it may deem proper and necessary for the performance of its work, the effective enforcement and administration of this act, the establishment of educational requirements for license renewal, and the protection of the public. There are a number of provisions under the Business and Professions Code that apply to all other health-related licensing boards, but not to this Board. This would include cite and fine authority, inspection authority, injunctive relief, board and public member requirements, examination and review requirements, periodic sunset review, and all future requirements or changes made by the Legislature that apply to all health-related boards under the Department.

The Legislature must generally rely upon the Board to implement similar requirements, or attempt (and remember) to include this Board in any statutory changes that it considers necessary for other boards under the Department. And, it is not always clear whether the Legislature has this authority in the first place, since it is not stated in the Chiropractic Initiative Act. It should be made clear by the Legislature that this Board will be subject to the same consumer protection requirements as all other health practitioner licensing boards, and that the Board should pass regulations to implement these changes. If the Board is unable to adopt certain requirements, then it should seek the authority necessary under the Initiative Act to effect these changes. Although there have been concerns raised by the profession about amending the Initiative Act, there is no clear argument why this board should not be treated similar to other consumer health-related boards, and subject to the same consumer protection requirements. This Board should not be allowed to continue as an unaccountable "fourth branch" of government just because it was created by an Initiative Act.

ISSUE #5. (ARE THERE STILL MANAGEMENT AND PRACTICE ISSUES THAT THE BOARD NEEDS TO ADDRESS?) There were some long-standing staff and management deficiencies with the Board. The Board was also not taking an active role in assuring discipline of licensees who violated the Chiropractic Act nor setting appropriate practice standards for the profession.

Recommendation #5: ***The Joint Committee recommends that the Board and staff should continue its effort to improve on the efficiency and operation of the management of this Board. It should conduct a thorough review of all regulations and codify those that have been challenged and strengthen those that are considered weak. The Board should consider trends in the industry and establish proactive policies and regulations to address new enforcement challenges. For example, there are a number of practice issues that the Board should address, including: (1) The appropriate use of specialty titles or certifications by chiropractors; (2) The use of certain treatments, experimental devices or procedures and "alternative" products; (3) The use of x-ray equipment by chiropractors; (4) Clarification on use of physical therapy techniques by chiropractors; (5) Qualification of chiropractors to perform school physicals; and, (6) Authority needed to deal with unlicensed chiropractic practice.***

Comments: Past operational problems with this Board include: (1) budget problems that resulted in illegal deficit spending and suspension of enforcement cases because of insufficient funds; (2) inconsistent and inappropriate application of chiropractic practice laws and regulations;

(3) staffing problems; (4) lack of cite and fine program; (5) no measurable consumer outreach or education efforts; (6) backlog of enforcement cases; (7) focus on micro-managing of staff rather than policy-making or long-range planning. The Board also has had some long-standing management deficiencies including budget shortfalls and excess reserves, low employee morale, inadequate data reporting systems, and lack of long-range planning. Recent staffing changes have resulted in promising improvements in the day-to-day management of the Board's operations. However, the Board itself, as a policy making body, needs to show more leadership in its enforcement of the Chiropractic Act, as opposed to relying on an overly technical, highly bureaucratic approach to chiropractic discipline.

It also needs to deal more directly with practice related issues, including any advances in the use of new diagnostic and/or treatment procedures, since the Legislature does not appear to have authority in this area.

ISSUE #6. (ARE THERE STILL CHANGES OR IMPROVEMENTS NECESSARY TO ENHANCE THE BOARDS ENFORCEMENT PROGRAM?) The Board has made significant efforts to improve its enforcement program since 1996. Nonetheless, there are still improvements that the Board should make to enhance its consumer protection role.

Recommendation #6: ***The Joint Committee recommends that the Board should adopt the best practices of other boards that have strong enforcement programs. Examples of these practices include streamlining complaint handling of cases, inspection of Chiropractic offices, better coordination with the Division of Investigation and Attorney General's Office on case investigation and prosecution, and enhanced disciplinary authority for unprofessional conduct or other violations of the law by licensed chiropractors.***

Comments: The Board has made significant efforts to improve its enforcement program. Nonetheless, there are at least four areas where the Board could enhance its consumer protection role. For example, the standard time frame for the handling of complaints is still approximately six months, and a substantial number of investigations take from one to two years to complete before any legal action is taken. Like other boards that have gone through the sunset review process, the Board should attempt to reengineer its enforcement process to shorten the time frame for investigations. Additionally, the Board does not receive information on civil actions brought against its licensees. Most health care related boards have established mandatory reporting procedures with the courts, insurance carriers, and hospitals on civil actions brought against their licensees. This information has proven to be a valuable tool in identifying potentially dangerous medical practitioners. Also, it is not clear what authority the Board has to inspect Chiropractic offices to assure they meet appropriate health and safety standards, and are adhering to appropriate practice standards of the profession. This authority, and when it will be used, should be clarified by the Board. Lastly, the Board needs to enhance its disciplinary authority by adopting similar standards of other health-related boards to determine unprofessional conduct or other violations of law by chiropractic practitioners.

ISSUE #7. (USE EXCESS FUND RESERVE TO IMPROVE BOARD'S PROGRAMS?) The Board has over two years of excess fund reserve in its current budget. It is only necessary that they retain three to six months reserve to be fiscally sound. However, the Board may have increased staffing needs to improve its licensing and enforcement programs as recommended by the Joint Committee.

Recommendation #7: ***The Joint Committee recommends that the Board should seek appropriate spending authority for an increase in staff to improve its licensing and enforcement programs. If Board revenues are projected to remain stable after this spending increase, the Board should also consider reducing license renewal fees for a limited time period.***

Comments: The Board has over $3.6 million in reserve for the current fiscal year, which is twice its annual budget. This reserve is expected to grow to $4.5 million in two years. Clearly, this is an excessive amount to keep in reserve. Generally, a three- to six-month reserve is recommended as a prudent amount. Unlike other special funded programs, this Board was not subject to a General Fund transfer during the early 1990s state fiscal crisis. Thus, the Board's reserve level cannot be attributed to a one-time return of monies. Though it is difficult to isolate the cause of the growing reserve, this trend in troubling given that the Board has been criticized for lax enforcement efforts.

The Board should develop a plan for spending down its reserves. Options to do this include temporarily reducing fees, funding one-time projects such as information technology upgrades, and dedicating more resources to its licensing and enforcement programs. Before selecting any of these options, the Board needs to carefully evaluate its long-term funding requirements.

ISSUE #8. (CHANGE COMPOSITION OF THE BOARD?) The current composition of the Board includes five professional members and only two public members (seven total members). The Governor chooses all members of the Board. Most other health-related consumer boards have a better balance of public members to professional members, and all boards under the Department allow the Senate and Assembly to each choose a member of the board.

Recommendation #8: ***The Joint Committee recommends that there should be two additional public members added to the Board, bringing the Board's composition to 5 professional members and 4 public members (nine total members). One public member should be appointed by the Senate and one public member by the Assembly.***

Comments: The Joint Committee has consistently recommended providing a better balance of public members to professional members for health-related licensing boards, especially if there has been some evidence of problems with a board in the past of lacking a consumer protection focus, and being somewhat more dominated by industry interests. The Board itself recognizes the current trend toward an increase in public representation on regulatory boards and would welcome input from more public members. As stated by the Board, this increase in public

members may help increase the consumer perspective in Board deliberations. It recommended increasing the Board by two public members. This would bring the total membership of the Board to nine, with 5 professional members and 4 public members. The Senate and Assembly should each be able to choose one of the public members, since all other boards under the Department permit the Legislature to appoint members.

There are currently eight health-related consumer boards that have similar professional majorities, (one additional professional member over that of the public membership). Two health-related boards have a public majority. The only super-professional majority boards (with a 2 to 1 ratio) are the Medical and Dental boards. (It should be noted that any change in the membership to this Board will possibly require a change in the Initiative Act.)